General Procedures for

Administrative Hearings

California Public Employees' Retirement System

This document is a brief, general outline of the administrative hearing procedures written for the lay person. If you have any additional questions regarding these procedures, the California Public Employees' Retirement System (CalPERS) Legal Office will be happy to discuss them. The CalPERS attorney will be unable to give you legal advice, as it is the attorney's duty to protect the interests of CalPERS.

You have received this outline of the hearing procedure for two reasons:

- CalPERS has denied your request or application, and you or another party have filed a timely appeal of that denial and requested a hearing; and
- You are considering representing yourself at the administrative hearing, and you are not an attorney. (If you decide to obtain representation by an attorney, please contact that attorney as soon as possible, but at least several weeks in advance of the hearing, so he or she will have ample time to prepare your case.)

What Happens Next: Order of Procedure

1. The Hearing Date & Statement of Issues
2. Discovery of Evidence
3. The Hearing
4. The Proposed Decision
5. The Board's Decision

CalPERS

1. Hearing Date & Statement of Issues

CalPERS' Responsibilities

As the administrative agency, CalPERS has the legal and financial responsibility to obtain a hearing date and hearing room, arrange for the judge and the court reporter to be present, and write the "Statement of Issues" (the written document which officially begins the hearing).

The Parties

There will be at least two "parties" (persons or entities having a real interest in the outcome) to this action, the petitioner and the respondent(s). CalPERS will be referred to as the "petitioner" (the party who requested the hearing); all other parties are generally referred to as "respondents." All parties named as respondents in the case do not necessarily have the same interests, and may not be on the "same side." If you have any questions regarding a particular party's position, please ask that party or the CalPERS attorney.

Pleadings/Court Documents

After CalPERS has obtained a hearing date and has drafted the Statement of Issues, and several weeks before the hearing date, you will be "served" with a copy of the Notice of Hearing, the Statement of Issues, and a copy of the law pertaining to discovery. Please read these documents carefully. The Notice of Hearing contains the date, time and location of the hearing, and other important information. The Statement of Issues contains a brief discussion of the issues involved, and the law upon which the application and denial were made. If you feel an issue has been omitted, please discuss this with the CalPERS attorney as soon as possible. Some respondents wish to submit written argument to the judge prior to the hearing. While this is not necessary, it is permissible.

Confirmation of Hearing Date

If you are unable to attend the hearing on the scheduled date, **please call the CalPERS Legal Office at (916) 795-3675 as soon as possible.** CalPERS is reluctant to continue a case, and delays (continuances) are only granted for good cause. Any continuance must be granted by the judge.

2. Discovery of Evidence

Sharing of Information

Each party has the legal right to know what information other parties possess regarding the case. You may submit a written request to CalPERS or any other party to find out what documents, witnesses, or information they have relating to the case (regardless of whether they are actually going to present that evidence at the hearing).

Submit any written requests to:

CalPERS Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707

CalPERS, or any other party, also has the right to obtain information from you. This sharing of information greatly reduces the amount of time required for the hearing. Contrary to being beneficial to the case, a "surprise" witness or evidence may actually be excluded by the judge.

Discovery Request

Each party is responsible for making a discovery request as soon as possible after the mailing of the Statement of Issues, and to answer any discovery request made of them as soon as practicable. (If only a portion of the information is available when the request is received, that portion is sent with the promise of sending any additional information as soon as it is obtained.) If a party to the action does not respond to a discovery request, the judge can delay the hearing until the information is received.

What is Evidence?

Types of Evidence

Evidence may be classified as "direct evidence" or "hearsay evidence."

Direct Evidence

Direct evidence generally includes documents, objects, or testimony that is personally and directly known by the witness, without relying on information from other people or sources. You must have at least some direct evidence to support any issue that you wish the judge to decide.

Hearsay Evidence

In simplified terms, hearsay is generally evidence of a statement that was made by someone other than by the witness who is testifying. Hearsay evidence may be introduced to explain or supplement other evidence. Please note that the judge is not legally permitted to decide an issue only on the basis of hearsay evidence; there must be some direct evidence to support your position. It is possible for hearsay evidence to be introduced as direct evidence, but only if the parties agree in advance to treat it that way. There are also certain exceptions (in the civil court hearsay rules).

If you would like more information about these exceptions, contact the CalPERS Legal Office at (916) 795-3675.

Evidence Of Other Disability Determinations

There is a common misperception that determinations, awards or settlements issued by the California workers' compensation system or the federal Social Security System are binding on the issue of entitlement to a CalPERS disability retirement. However, many courts have held this is not the case. A finding or conclusion of any kind reached in a workers' compensation proceeding or court case—even if you are found to be 100% permanently disabled—does not bind CalPERS. (*Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208.)

For the same reasons, findings made under the federal Social Security disability laws and regulations, an entirely separate system with different disability criteria and procedures, are not binding on CalPERS. Therefore, evidence of disability determinations in other systems has very limited value in a CalPERS administrative appeal.

How to Subpoena a Witness

If you wish to subpoena a witness, you may obtain the subpoena from the Office of Administrative Hearings, or CalPERS can send you a copy. It is your responsibility to contact your witnesses, arrange for them to be present at the hearing, and to pay any fees required.

3. The Hearing

Role of the Judge

The judge who will hear your case is an independent Administrative Law Judge with the Department of General Services, Office of Administrative Hearings. It is his/her job to receive and review the evidence in a case, and to write a recommendation to the CalPERS Board of Administration called a Proposed Decision.

Procedure

Administrative hearings are "public hearings," but are generally not attended by anyone except the actual parties involved. The judge will officially open the hearing, and the CalPERS attorney will present the original Statement of Issues to be marked as the first exhibit. Each party will then be allowed to make an opening statement, if desired. The party challenging the CalPERS decision will have the burden of proof and will proceed first. The evidence is presented, and witnesses are called. Because of the discovery process described above, the documents and witnesses should already be known to you. Of course you have the right to question any witnesses. When the hearing is over, the case is "submitted." Sometimes one of the parties or the judge may request that the parties prepare additional written argument. If so, the case is deemed submitted after the last written argument is received by the judge.

4. The Proposed Decision

The judge has 30 days from the case being submitted to write the Proposed Decision. The judge is to make the Proposed Decision based on which party had the most convincing, competent evidence to support its position. The judge submits the Proposed Decision to the CalPERS Board. You will receive a copy of the Proposed Decision within 30 days after it is submitted to the CalPERS Board. The Proposed Decision will be scheduled for final action at a public meeting when the CalPERS Board will take one of the actions described in the next paragraph.

5. The Board's Decision

Acceptance/Rejection of Proposed Decision

The Administrative Law Judge's Proposed Decision is not the final decision. The CalPERS Board must vote whether or not to adopt the Proposed Decision as its own Decision. When you receive your copy of the Proposed Decision, you will be given the date that the CalPERS Board will meet in public and act on your case, and how you may submit further written argument if you wish. Oral argument is not permitted by any party at this meeting of the CalPERS Board. The CalPERS Board has the option to: (1) adopt the Proposed Decision; (2) remand the case back to the Office of Administrative Hearings for the taking of further evidence; or (3) reject the Proposed Decision. If the CalPERS Board rejects the Proposed Decision, the CalPERS Board will hold a full Board Hearing. At this Board Hearing, Board Members will be provided with the court reporter's transcript of the administrative hearing and all of the exhibits in the case (you will receive copies of these also). You may come and argue your case before the CalPERS Board, and/or submit written argument. The CalPERS Board will then make its own independent decision regarding your case.

Petition/Appeal of Decision

Any party who is dissatisfied with the CalPERS Board Decision may petition the CalPERS Board for reconsideration of its Decision, or may appeal to the State Superior Court. You will be notified of this right when you receive your copy of the CalPERS Board Decision. After all appeal periods have expired, the CalPERS Board Decision is considered final, and will be acted upon. This is generally 30 days after adoption.

Precedential Decision

The CalPERS Board has the power to designate any Board Decision as a Precedential Decision.

The Effect of a Precedential Decision on Your Appeal

A Precedential Decision in another case is binding on the parties in your appeal if the rule of law set forth in the Precedential Decision applies directly to the facts of your case. The parties in an appeal may cite Precedential Decisions that support their position to the Administrative Law Judge who hears the case, who in turn may rely upon them in writing the Proposed Decision.

Obtaining an Index or Copy of Precedential Decisions

An index and the full text of all CalPERS Precedential Decisions are available at **www.calpers.ca.gov**.

Contact Information

CalPERS Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
(916) 795-3675

California Public Employees' Retirement System
888 CalPERS (or 888-225-7377)
www.calpers.ca.gov

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